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# Negotiating Brexit:

## the European Parliament between Participation and Influence

### **Abstract**

Article 50 of the Treaty of Lisbon gives the European Parliament (EP) the power to consent on the terms of the withdrawal agreement between the exiting state and the EU. As Brexit is the first case where art. 50 has been invoked, the role of the EP in such a procedure is uncharted territory. This article assesses to what extent the EP has contributed to the Brexit negotiations until November 2018. Drawing on official documentation and thirteen original interviews with EU policy-makers, it maps the Parliament's organisational adaptation to prepare itself for the challenge. Through its steering group and coordinator, and by carefully issuing resolutions, the EP has managed to become a 'quasi-negotiator'. More difficult to detect is the EP's actual influence, as its preferences were closely aligned to those of the other EU institutions. Overall, the EP had a selective attention in the process, primarily focusing on citizens' rights.

**Keywords:** Article 50; Brexit; Consent; European Parliament; Empowerment; Influence

## Introduction

Brexit is an unprecedented event for the European Union (EU). With the success of the ‘Leave’ option in the British referendum in June 2016, the EU – and, not dissimilarly, the UK – have entered uncharted territory. Art. 50 of the Treaty of Lisbon, which delineates the procedure of withdrawal, has never been previously invoked. This procedure is particularly scant for the European Parliament (EP), whose role is only to provide its consent to the withdrawal agreement between the EU and the departing Member State.

As the consent procedure is used by the EP, among other things, for the approval of international trade and association agreements, it is tempting to look at the past use of this procedure to better understand the role of the EP in the Brexit negotiations. For instance, the EP has already shown that its consent cannot be taken for granted, voting down the EU-US agreement on bank data transfers and rejecting the anti-counterfeiting trade agreement. On the other hand, however, the procedure of withdrawal is more complex and the separation of a Member State from the EU more ‘dramatic’ than the negotiation of an international agreement.

This article assesses the role of the EP in the process of withdrawal of the UK from the EU, from the immediate aftermath of the referendum in June 2016 to the Brexit negotiations up to November 2018, when the Brexit withdrawal agreement and the political declaration were endorsed by the 27 members of the EU and by the UK government. We argue that these negotiations pose a dual challenge for the EP – in the context of, *ça va sans dire*, a much bigger challenge for the EU. Institutionally, the EP is formally involved only towards the end of the process and unlikely to withhold its consent to the withdrawal agreement at that final stage. The EP would prefer almost any type of agreement to a no-deal scenario. In addition, the members of the Parliament (MEPs) would hardly wish to be seen as those standing in the way of such a significant and complex deal. Substantively, as the EP is not formally negotiating the

withdrawal treaty, its input may only reach the negotiators' table in a round-about and indirect way.

Yet, as previous research has demonstrated, the EP hardly misses a chance to strengthen its institutional role (Rittberger 2005; Héritier *et al.* 2015). Brexit – and, more precisely, the vague provisions of art. 50 TEU – present an opportunity for the EP to fill the gaps in such ‘incomplete contracts’ (e.g. Farrell & Héritier 2007) and acquire a more prominent role *during* the negotiation process, thus becoming a ‘quasi-negotiator’ standing on the side of the European Commission and the member states. At the same time, we are wary of the capacity and willingness of the EP to translate its enhanced institutional role into policy influence. While the EP’s empowerment tends to have a moderating effect on its behaviour in general (Ripoll-Servent 2014; Paper 4), this is even more so when the negotiations tackle an “existential crisis” of the Union (Bressanelli & Chelotti 2016; 2018). This is not to say that the EP does not seek to influence the negotiations but, rather, that its interests and priorities might be reconsidered and softened if they risk undermining the general interest of the EU.

Empirically, this article focuses first on the organisational adaptation of the EP to be a player in the Brexit process. It then evaluates its institutional involvement in the Brexit negotiations, and traces its influence in the key negotiation dossiers from the first phase up to November 2018. We rely on thirteen original interviews (see the Appendix for details) with key policy-makers in the EP and other EU institutions, and triangulate this information with official documentation, press excerpts and statements by the key players.

By analysing in-depth the process of withdrawal of the UK from the EU, this article shows the effectiveness of the EP in strengthening its institutional role using the extant rules to its own advantage. Brexit is therefore part and parcel of a longer story of institutional empowerment of the EU’s only directly elected institution (e.g. Roederer-Rynning & Greenwood 2017). More difficult is to assess the actual policy influence of the Parliament. The preferences of the various

EU institutions were very similar in the whole period under consideration. On the whole, the EP mostly focused on one specific set of Brexit issues (i.e., citizens' rights), while appearing more reactive on the other negotiating items.

### **Some lessons from other consent precedents**

The consent (formerly assent) procedure requires the EP's consent to a proposed act, in the case of Art. 50 TEU by a single vote with the majority of votes cast.<sup>i</sup> Contrary to the ordinary legislative procedure, the EP cannot amend a proposed act but without its consent the act cannot be adopted. Among the many legal bases for legislative and other policies specified in the treaties there are only relatively few (25) that are subject to the consent of the EP, some of them legislative, others not.<sup>ii</sup> These articles concern domains where citizens' individual rights, the Parliament's own institutional prerogatives or the constitutional and budgetary foundations of the EU are at stake. Numerically and politically, association and other agreements with third countries dominate the application of the consent procedure since the entry into force of the Lisbon Treaty. Among the approximately 120 consent procedures that were henceforth voted in plenary, about 85% concerned different types of these agreements (association agreements, trade agreements, partnership agreements, accession to multi-lateral conventions and others).

The Lisbon Treaty thus had the double effect of introducing the possibility for a Member State to withdraw from the Union and of attributing a new institutional role to the EP in the negotiation of international agreements. The final withdrawal agreement with the UK is a special example of such an agreement. A brief look at a few selected consent procedures may help us to understand the calculations that the Parliament may apply throughout the Brexit negotiations. The three cases below – where the EP used, or threatened to use, its veto power – vary in process and outcome, largely due to the time span elapsed and the experiences made

by the MEPs since the entry into force of the Lisbon Treaty. They all provide some insight into the role of the Parliament in the consent procedure and, possibly, into the Brexit negotiations (cf. Eckes 2014).

*Case 1: Personal Name Record (PNR) Agreements.* For a long time, access to and transfer of passenger name records (PNRs) fell under the purview of the 1995 EU Directive on data protection, replaced on 25 May 2018 by the General Data Protection Regulation (GDPR). In principle, PNRs may only be transferred to countries with data protection laws guaranteeing an equivalent level of protection. From May 2004 to February 2012 three PNR agreements were signed and ratified by the US and the EU. Concerns were regularly expressed by activists and parliamentarians about the different uses the US government might make of EU citizens' personal data. After Lisbon, in April 2012, the third PNR agreement was adopted by the EP, when stronger provisions to protect PNR data, including a watchdog role for Europol and Eurojust, were included.

However, the draft of a fourth PNR agreement was roundly rejected by the Committee on Civil Liberties (LIBE) in 2013 for its lack of proportionality and violation of fundamental rights. After the 2015 Paris attacks, the proposal resurfaced with the support of the European Council, and first the LIBE Committee, then the plenary in April 2016 gave its consent to the directive. In the long PNR story, the EP acted under varying constraints. Not only there was a substantial pre-Lisbon history of previous agreements, establishing practices and experiences; it was also feared that bilateral agreements between the US and some Member States could be signed after a rejection of the agreement, leading to national rather than common European solutions. Perhaps more significantly, the need to effectively tackle international terrorism put pressure on the EP to leave aside its more 'radical' demands and work towards a compromise with the Council.

*Case 2: Terrorist Finance Tracking Program (TFTP) agreement.* According to the European Commission “the TFTP has [...] helped detect terrorist plots and trace their authors. An EU-US Agreement on the exchange of financial information ensures protection of EU citizens’ privacy” (European Commission, 2018). Towards the final phase of the TFTP negotiations it became evident that a complete data export from the Belgium-based SWIFT system was envisaged. Concerns about the protection of European citizens’ personal data became virulent. This led the Parliament to reject the agreement, on 11 February 2010, by 378 to 196 votes, showing a rather clear cleavage along party lines. The Commission had to negotiate a new treaty for the US to be able to continue to access the SWIFT database. It thus introduced a new proposal with strengthened safeguards. Several observers noted that the modifications were only nominal, and that the Parliament changed position because it had demonstrated the will to make use of its new powers. The EP gave its support to the agreement only once its “right to be involved” was recognised (Ripoll Servent 2014; Meissner 2016; Monar 2010).

*Case 3: Anti-Counterfeiting Trade Agreement (ACTA).* ACTA was signed in 2011/12 by 9 countries, the EU and 22 of its Member States. Its purpose was to define international standards for intellectual property rights enforcement. This included combating counterfeit goods, copyright infringement on the Internet and guidelines for protecting generic medicines. Opposition to ACTA in the EP was first fuelled by anger aroused by the Commission’s lack of transparency in its communications about the progress and content of negotiations (Crespy and Parks 2017).

Following the recommendation of the five committees that had already voted against the treaty and ignoring calls by the Conservative groups to postpone the vote pending the opinion of the Court of Justice of the EU on its compatibility with EU law, a large majority of MEPs (478) rejected the agreement on 4 July 2012. Led by vocal interest associations, public opinion perceived ACTA as a symbol of secretive trade diplomacy controlled by economic interests.

MEPs were intensively lobbied by constituents and civil society (Dür and Mateo 2014), which led to a clear majority against ACTA at both the committee and plenary level. ACTA became the prime example of Parliament's role as a public arena taking into account citizens' and activists' concerns.

As a result of these inter-institutional struggles over PNR, TFTP and ACTA, the EP came to scrutinize on a regular basis the state of play of later negotiations, e.g. the Transatlantic Trade and Investment Partnership (TTIP) and the Comprehensive Economic and Trade Agreement (CETA). MEPs notably criticised the lack of transparency of the Commission and the Council during these negotiations.

These cases illuminate some important factors that influence Parliament's position-taking in consent procedures. Overall, the Parliament showed a significant degree of responsibility and pragmatism. While it voted no at some intermediate steps (PNR agreement) only in one case (ACTA) it provoked the complete abandonment of a fully negotiated agreement. The EP seems to hesitate on using the "nuclear option" of refusing consent. Early after Lisbon, it was important to convince the other players of its new-won powers. Seeing itself as a democratic arena, the EP reacted to strong public activism and defended citizens' rights, notably against practices not well aligned with EU fundamental rights. Finally, it insisted on opening international negotiations to democratic scrutiny.

As for Brexit, unless the negotiation outcome has profound faults in the eyes of the EP's mainstream groups, the EP is unlikely to block the withdrawal agreement. On the one hand, if negotiations fail the divorce between the EU and the UK will be extremely severe. A border between Northern Ireland and the Republic of Ireland would be established; the UK might not pay its withdrawal bill; possibly, the rights of EU citizens in the UK (and UK citizens in the EU) will not be protected – or fewer guarantees might be granted. In addition, free from any association with the EU, the UK might diverge from EU rules and standards in numerous fields



including state aid, environment, taxation, etc. – which is what the EP wants to avoid (e.g., European Parliament 2018: 3-4; 10). Even a Brexit deal that ignores or violates several (many?) of the EP's demands is closer to the EP's preferences than the alternative (a no-deal). Rationally, the EP has strong incentives to accept almost any type of deal.

Furthermore, when stakes are high and crises might materialise (as, arguably, in the case of Brexit), the EP tends to behave responsibly (Bressanelli and Chelotti 2018). Considering the wider good of the EU, MEPs do not insist on many of their requests and often prefer not to take action. In such circumstances, they do not want to be seen as the actors that block momentous agreements or bring about negative consequences for the EU.

### **The strategies of the EP to 'matter' in the Brexit process**

The consent vote arrives at the very end of the negotiating process, when the content of the Brexit agreement has already been decided by the Commission Task Force and the UK government. At that point, there is little that the EP can do to change the package, as it is left with a 'take-it-or-leave-it' option. If the EP wants to make sure that its preferences are counted, it has to be involved in the actual negotiations and participate in the definition of the positions. It is at the negotiating stage, and not at the end of the process, that – as Sir Ivan Rogers, former British Ambassador to the EU, told the Commons Treasury Select Committee – the EP will likely have more leverage (Horten 2017).

As Brexit is the first exit in the EU's history, it is not surprising that neither interinstitutional agreements nor informal rules on the modalities of negotiating a country's withdrawal exist. In these circumstances, we know that the EP has been traditionally very successful in using incomplete contracts to increase its institutional power (Farrell and Héritier 2007; Rasmussen and Toshkov 2011). Through a series of micropolitical struggles (Wiesner 2018) – which

includes using time pressure, windows of opportunity, democratic legitimacy and symbolic power (Rittberger 2005) or allying with the Commission – the EP has been able to interpret ambiguous rules or new situations to its advantage.

Crucially, the EP has often done so by skilfully linking different arenas: by delaying or withholding its consent in areas where it had a strong institutional basis, it was able to acquire new competences in other policy-making domains (Héritier *et al.* 2015; Paper 2). In the case of the Brexit negotiations, the EP does not have to look very far to find the right arena-linkage. It can use its power of consent as a tool to obtain a voice throughout the entire process and become fully – if not formally – involved in the negotiations or, as we show in this article, a ‘quasi-negotiator’. This is what the EP has done, albeit to different extents, in EU trade policy. The Lisbon treaty gave the EP the obligation to ratify international trade deals. Unlike the withdrawal agreement and article 50, in the case of trade policy the EP has been granted the right of being “immediately and fully informed at all stages of the procedure” (art. 218(10) TFEU). Through these powers (of consent and of full information), the EP managed to upgrade its institutional position – albeit certainly not being on equal footing with the Council. In any event, the Parliament became involved in all phases of trade negotiations while also influencing the relative agenda and content (Roederer-Rynning and Kallestrup 2017; Van den Putte *et al.* 2014).

In the case of Brexit, we aim to evaluate to what extent the EP has been successful in increasing its institutional powers – whether it has remained a veto player at the end of the game or has developed the ability to shape the negotiations throughout. Analytically, we can identify three areas of further EP empowerment. First, we can assess the access of the EP to the information produced and/or acquired by the Commission and the Council. The Brexit negotiations are extremely transparent, but the negotiating teams possess restricted information unavailable to the public. Here, we can examine the nature of the dialogue between the Commission and the

EP. For instance, unlike other trade negotiations, in the case of TTIP the EP was kept informed before and after each round of talks (Van den Putte *et al.* 2014). The timing of the consultation is also important. In trade policy, it is not infrequent that the Council shares documents with the EP with significant delays (Abazi and Adriaensen 2017).

Second, the EP might not only be kept informed, but also be involved in the various stages of the Brexit process (the ‘quasi-negotiator’ scenario). The EP would participate when the European Council negotiates its guidelines, the Commission drafts the Council directives and the Council finalises them. In addition, at crucial moments of the negotiations, the EP would be admitted to the decision-making rooms. In the negotiations that led to the SWIFT Agreement, the EP was included by the Commission during the agenda-setting stage, and by the Council Presidency in the very last rounds of negotiations.

Being informed of the proceedings and/or participating in the negotiations do not automatically translate into real impact. The third aspect concerns the ability of the EP to shape the content and direction of the Brexit talks in tangible and significant ways. The EP has several instruments at its disposal to influence the mandate and its evolutions – e.g., resolutions, committees’ opinions, hearings, parliamentary questions, etc. (cf. Roederer-Rynning and Kallestrup 2017: 813). In particular, EP resolutions can be used as *de facto* mandates, outlining the Parliament’s red lines which have to be respected if its consent has to be obtained.

Applying this analytical grid, three scenarios on the influence of the EP in the Brexit negotiations can be presented. The first one posits that the EP is satisfied of being informed and involved and does not strive to shape the policy content of the negotiations. The process of ‘institutional patriotism’ (Priestley 2008) – in which the EP has been strengthening its participation in EU decision making processes – has continued successfully and the EP does not aim any further. Indeed, in many occasions the fights that the EP has conducted on

legislation “have not been about the content of politics but about ensuring that certain institutional rights are expected or maybe even expanded” (Rasmussen and Toshkov 2011: 72).

In a second scenario, the EP leaves its mark on the substance of the negotiations but focuses on a restricted number of issues. On the one hand, the Brexit negotiations cover a vast range of issues and sub-issues and the EP will have to prioritise. The EP is a politically and bureaucratically fragmented actor, the resources and staff at its disposal are relatively scarce and often difficult to mobilise in a coherent fashion to pursue a comprehensive negotiating agenda. As a result, the EP would attempt to intervene in the negotiations to promote a (relatively small) set of priorities. In the case of the EU-South Korea trade deal, for instance, the EP concentrated on changing a few specific clauses and asked the Commission to re-negotiate them (Elsig and Dupont 2012). On the other hand, the EP may prioritise those political issues where it clearly sees its democratic mandate as the representative of EU citizens as it did, for instance, when it reacted to the demands of civil society in the ACTA negotiations.

The third scenario is that the EP manages to exert the main impact on the Brexit negotiations among EU actors. Here, the Parliament presents a fully-fledged position on Brexit – rather detailed on the various items under negotiation – which ultimately informs the EU objectives and instructions. In case of different preferences between the EP and the Commission and/or member states, the final EU position would reflect the Parliament’s priorities. If the preferences are instead homogeneous, it becomes more difficult to tease out the specific influence of the EP from that of the Commission and/or Council.

Finally, the analysis so far has treated the EP as a relatively independent actor. It might be that, in the Brexit negotiations, the Parliament, the Commission and/or Council engage in strategic interactions, which might take different forms. These institutions might collaborate and provide collective leadership to the EU. They would jointly construct and update the EU positions throughout the various stages of the negotiations – working in different formats and fulfilling

both formal and informal tasks (Nielsen and Smeets 2018). Otherwise, it might be that the EP's policy preferences are strategically used by the Commission in the course of the negotiations. The empowerment of the EP would assist the EU negotiating team in extracting more concessions from the UK.

## **The organisational adaptation of the Parliament**

### ***First steps after the referendum***

Having learnt the result of the British referendum the majority groups of the EP set out to define their political priorities. Implementing them required a clear-headed approach to the negotiations due to begin after the formal notification by the British government. A major problem facing the Parliament, more so than is the case with the Commission or the Council, were the two political groups supporting Brexit (Europe of Freedom and Direct Democracy – EFDD - and Europe of Nations and Freedom - ENF). Whereas the European Council and the Commission were able to develop their Brexit policy without British participation, the political problem of dealing with British MEPs was more delicate, as they represent not only British citizens but also other EU citizens who voted in the UK. Soon after the Brexit referendum, an informal cross-party group of British MEPs was formed, with members mainly coming from Labour and the Liberal Democrats but including a few Conservative MEPs in favour of Remain. The group met about once a month, usually during the plenary part-session in Strasbourg, until autumn 2018. Its impact on Parliament's strategy during the Brexit negotiation was not clearly visible.<sup>iii</sup>

The day after the referendum, EP President Martin Schulz suggested that Parliament's customary approach, the establishment of a Special Committee, would be too slow and

inappropriate (Conference of Presidents 2016a; Interview#10). Most EP committee work is public. Parliament's intention to weigh in as a serious actor in the withdrawal negotiation would have been put at risk: the two other institutions would then need to filter their exchange of information with the EP to keep negotiating positions from public contention.

Consequently, Parliament's Brexit related work was to be supervised at the highest political level, with novel procedural arrangements. Although there were a few antecedents for such institutional innovation (e.g. an ad-hoc group established by the EP President in 2015 to coordinate committees' positions on the TTIP agreement), the set-up chosen for the Brexit process was inventive in several ways. The President of the Parliament and the Conference of Presidents (CoP) seized overall responsibility, with due involvement of the Conference of Committee Chairs, the Bureau, the groups and the committees. However, these latter parliamentary bodies were not to be involved in the direct observation of negotiations. Administrative support for the Brexit process was to be provided by the Deputy Secretary General and hence by DG Presidency staff, headed by the Director for Legislative Coordination and Inter-institutional Affairs (Conference of Presidents 2016b; 2016c).

Long before the UK notification letter was sent on 29 March 2017, the EP began to prepare for the drafting of a first resolution pointing out its priorities and red lines. The draft resolution was to be submitted to the plenary by the CoP, considering expertise provided by the committees. On 8 September 2016, the CoP decided to appoint Guy Verhofstadt, President of the ALDE group, Brexit coordinator "at the level of the Conference of Presidents", once more underlining the CoP's direct responsibility for steering Parliament's involvement in the negotiation. Among the reasons for choosing Verhofstadt, a choice initiated and strongly supported by President Schulz, were his long experience as former member of the European Council and, as MEP, in inter-institutional negotiations such as those on the Inter-Institutional Agreement on Better Law Making (Interview#4).

The Brexit coordinator was requested to cooperate closely with the chair of the AFCO committee, Danuta Hübner, as the committee responsible for preparing Parliament's final vote on the withdrawal agreement. Beyond that, Verhofstadt's tasks included information exchange and coordination between the above-mentioned governing bodies, the committees and, last but not least, the Commission's Art. 50 Task Force and the Council's ad hoc Working Party on Art. 50. Besides, the Brexit coordinator was frequently requested to visit Member State capitals or to receive ministers and other key players of the Brexit process. On many occasions, Guy Verhofstadt and Michel Barnier appeared jointly before Parliament bodies.

### ***Responding to the UK's notification***

After the arrival of the UK government's formal notification letter, and in view of the experience made during the initial post-referendum stage (for instance in the informal drafting team preparing Parliament's first Brexit resolution), the CoP agreed, on 6 April 2017, the President's proposal to establish a Brexit Steering Group (BSG), to be chaired by Guy Verhofstadt and comprising the AFCO chair and four members representing the European People's Party (Elmar Brok), the Socialists and Democrats (Roberto Gualtieri), the Greens (Philippe Lamberts) and the European United Left (Gabriele Zimmer).<sup>iv</sup> Like its informal predecessor, the BSG is supported by the Deputy Secretary General, the Director for Legislative Coordination and Inter-institutional Affairs and DG Presidency staff.

In order to guarantee the coherence of Parliament's stance, it was decided to suspend any committee missions to the UK (Conference of Presidents 2017, Bureau 2017a). Moreover, a new approach was taken to collect and evaluate committees' expertise in drafting the Brexit-related resolutions. Instead of going through the traditional opinion-giving and lead committee process, including reiterated votes on various amendments, an informal consultation was

organised, directed by the support unit for the BSG. In addition, committee Chairs and coordinators took part in selected meetings of the BSG, depending on the matter discussed.<sup>v</sup> In most meetings, committees dealt with the impact of the current state of affairs of the Brexit negotiation on the policies under their remit. However, the EP leadership clearly wielded control on sectoral demands that might be detrimental for the institution's overarching strategy.

### ***Beyond the BSG***

Negotiating Brexit raised numerous administrative and budgetary problems. For example, in an early stage of the Brexit process concerns were expressed in the Bureau about the role and mandate of British MEPs during the rest of the 2014-2019 term and about the status of British EU officials and other agents (i.e. group officials, parliamentary assistants). Specific questions related to the Brexit impact on the 2019 budget – such as the viability and actuarial balance of Members' voluntary pension fund, the preservation of English as an official language, or the future of the EP Information Office in London – were discussed in the Bureau (Bureau 2017b; 2017c).

Between the end of June 2016 and November 2018 the EP's governing bodies, the CoP, the Conference of Committee Chairs, and the Bureau had Brexit on their agenda on a regular basis; during active periods of negotiation Brexit became a standard agenda item. All in all, there were around 70 meetings discussing Brexit in different degrees of intensity and detail. In addition, Brexit was on the agenda of AFCO about every other meeting from autumn 2016 onwards, often in the presence of Guy Verhofstadt, who reported on the current state of the negotiations. Many other committees have organised hearings on the impact of Brexit on their respective policies and on the analysis of different scenarios between hard, soft and in-between variants of Brexit. Often these hearings addressed Parliament's priority issues, such as the



hearing jointly organised on 11 May 2017 by four committees (LIBE, PETI, EMPL and AFCE) on “the situation and rights of EU Citizens in the UK”. Up to now, around 120 research briefings and studies on Brexit were drawn up or commissioned by DG EPRS or in the Policy Departments (Interview#5).

During the Brexit negotiation process, the Parliament has adopted four Brexit-related resolutions, which obtained large majorities of around 500 votes in favour (cf. Brusenbauch Meislova 2018).<sup>vi</sup> In addition to specific substantive points, the EP reiterated some general demands already made in earlier consent procedures, such as a maximum of transparency in the negotiations. The substance of the negotiations is what the next section finally focuses on – seeking to uncover firstly whether the EP managed to participate in the Brexit process, and secondly whether it has been an influential player both in the negotiation of the withdrawal agreement and the political declaration.

### **The involvement and influence of the EP in the negotiating process**

If ‘power’ is an attribute that actors can use to shape policy outcomes, ‘influence’ is when power is put into effect (cf. Paper 1; see also Thomson 2011). Influence does not simply mean that a decision-making outcome matches the position of an actor. This may be ‘luck’ rather than influence. Influence requires the exercise of power vis-à-vis other actors and their will.

As explained above, the formal role assigned to the EP by the Treaty of Lisbon would limit its presence to the very end of the negotiation process. Yet, the EP managed to get involved in the negotiations before art. 50 was triggered. This was not an obvious outcome. In mid-December 2016, as the EU was getting ready to start the divorce process, the EP leadership voiced its concerns very loudly. Reacting to the Council conclusions, attributing a secondary role to the EP in the Brexit negotiations, the EP President Schulz warned that there would be “grave

consequences if the European Parliament is excluded” in a letter to the European Council President Tusk. In such circumstances, the EP would not consent and the outcome “would be the very hardest of Brexits” (Schulz 2016). Similar concerns were eloquently expressed by the Brexit coordinator, Guy Verhofstadt, addressing the representative of the Council Presidency in the EP plenary:

What they are proposing is simply to say, ah, we go forward with the Brexit negotiations, but without the Parliament. We can invite sherpas, maybe, but that’s it. You are not aware that we have to approve these arrangements? OK, that’s already an enormous step forward, but I am going to tell you it’s time that you also involved Parliament from day one. Do you want that we open separate negotiations with the British authorities? (Verhofstadt 2016)

The Conclusions of the informal European Council on 15 December 2016 attributed a scrutiny role to the EP. The latter had to be kept “closely and regularly informed” and the Presidency of the Council would exchange views with the EP before and after the meetings of the General Affairs Council. As it is normally the case, the Conclusions reaffirmed that the President of the EP would be invited to be heard at the beginning of each meeting of the European Council. After Schulz’s departure, the new EP President Antonio Tajani – whose election was made possible by a deal between his People’s Party and Verhofstadt’s ALDE – demanded again the full involvement of the EP in the negotiations. Eventually, the EP obtained reassurances from the Council that its sherpas could attend meetings with the Council sherpas and its representatives could be closely associated to the Commission in the negotiations. This was a significant step further for the EP, facilitated by the support of the European Commission. As

a senior administrator of the EP put it: “if the EP does not consent, the negotiations come to nothing. Barnier quickly understood that, and he cultivated the relationship with the EP” (Interview#10).

The Commission (but also the Council) had a strategic incentive to fully involve the EP in the negotiations. At the end of the day “if you want to make sure that you have a positive result [...] you want to make sure that the EP has first of all no procedural complaints” (Interview#4). One more time, as it has often been the case in the history of the EP, with (the recognition of its) power came responsibility. While Schulz had threatened the EP’s veto had it been excluded from the negotiations, its involvement made it more moderate and cooperative. Despite claims that the Parliament was “ready to play the bad cop” and “complain about almost everything”,<sup>vii</sup> the analysis of the negotiations – up to November 2018 – tells a rather different story.

The negotiations – and the role of the EP in them – can be analytically divided into two phases, mirroring the actual negotiating process. In a first stage, following the triggering of art. 50 at the end of March 2017 until the Joint report on progress in December 2017, the EU established that three key issues – the rights of the EU citizens, the UK financial contribution to the EU and the border between Northern Ireland and the Republic – had to be agreed before discussing any future EU-UK relationship. Here, the EP endorsed the approach chosen by the Council and the Commission, albeit emphasising once again that its “full involvement” in the negotiations was a “necessary precondition” for its consent (European Parliament 2017).

In terms of substance, the behaviour of the EP during the first phase of the negotiations shows that the EP carefully and selectively chose what to focus on. The EP invested its resources on citizens’ rights, leaving the other two priority issues (the financial settlement and the Irish border) more to the side. As a senior administrator puts it: “we have not gone into finances. We have asked the budgetary control committee to scrutinize the arrangements. On Northern Ireland, we wait and see” (Interview#4).

Nonetheless, it is not easy to tease out the specific influence of the EP on citizens' rights. Although the EP could afford to speak out more loudly than the Commission on specific sticking points where the negotiating parties had divergent perspectives, it is difficult to appreciate whether the outcome would have been any different had the EP not publicly endorsed a position.

With Brexit perceived as a potentially 'existential threat' for the Union, both the three EU institutions and the major political groups inside the EP were willing to put aside somewhat minor divergencies to concentrate on the 'big picture'. According to senior administrators in the EP directly dealing with the Brexit process, the cohesion of the EU was "very much not a coincidence" as the EU institutions were "*constructing* an agreement" (emphasis added) and "alignments are always searched and achieved [between the EU institutions]" before negotiating (Interviews#10, #13; also Interview#9).

The Commission and the EP had a particularly close relationship. This is significantly confirmed by civil servants in the Council, surprised by the fact that "sometimes Verhofstadt even announced things which happened in the end and that Member States were not told that they were going to happen" (Interview#6, see also Interview#12). The Commission had been vocal about the (important) role of the EP<sup>viii</sup> and, on the issue of citizens' rights, "could exploit" (Interview#6) the EP to give additional political clout to the EU negotiating positions. For instance, following the third round of negotiations in late August 2017, the Commission and the UK negotiators could not agree on about a third of the issues identified on citizens' rights (European Commission 2017).<sup>ix</sup> The EP was keen to show its full support for the Commission. Playing the role of the EU citizens' advocate – as well as that of the UK citizens resident in the EU – the EP further pushed for their rights in the negotiations (substantively, e.g. family reunion, and procedurally, e.g. on the application for 'settled status'). Yet, the more radical stance of the EP was certainly not opposed by the Commission. As seen by a Council official,

“I don’t think that they [the EP and the Commission] diverge, really, in any kind of significant way. It might be just the nuance of it” (Interview#12).

In the second phase of the negotiations, from January 2018 until the finalization of the agreement in November 2018, two intertwined issues were on the Brexit negotiations table: the withdrawal agreement (including the transition period) and the future EU-UK relationship. The EP continued to press hard on the issues of EU citizens’ rights, insisting that they should be maintained during the transition period after 29 March 2019. Additionally, the EP was the first institution to make very clear – already in its October (2017) resolution on the state of play of the negotiations – that there were only two options available for Northern Ireland: either its full membership in the EU, or the UK remaining part of the customs union (Interview#10). The EP gave visibility to the issue of the border between Northern Ireland and the Republic of Ireland from the early days of the negotiations, endorsing a position which was later shared by the EU negotiators. As the negotiation efforts intensified during the autumn of 2018, the Parliament continuously reiterated the necessity of a backstop to avoid a ‘hard’ border between Northern Ireland and the Republic of Ireland to secure its consent to the deal.<sup>x</sup> Once again, its position – backed by internal cross-party support – mirrored that of the other EU institutions, and their firm, joint commitment to avoid the re-appearance of a hard border.

On the future relationship between the EU and the UK, the EP, in its March 2018 resolution, proposed an “association agreement”, modelled on those signed by the EU with third-countries willing to get closer to the Union (e.g. Ukraine). Its position differed from the one of the other EU institutions – as the Commission had signalled its preference for a Canada-like trade deal (given that the UK ruled out staying in the Single market), and the European Council Presidency reckoned that “unfortunately Brexit was about dissociation not association” (Brunsden 2018; cf. Interview#6). Yet, while at that stage the legal format of the future relationship differed in the eyes of the EU institutions, their substantive demands to the UK

were very similar. If the latter wanted high levels of access to the single market, it should have dropped several of its red-lines both in case of an association agreement (the EP's favoured option) or in case of a Norway-style deal (as endorsed back then by the Commission/Council).

Taking stock of the existing evidence, there are two aspects which stand out. First, while the EP has been outspoken on important issues (e.g. EU citizens' rights), its position did not significantly differ from that of the other EU institutions. Its four resolutions on Brexit followed the Council (draft) negotiating guidelines or directives, or the Commission's reports on the state of play. With a few exceptions (i.e. the association agreement), a comparison of the official documents of the EU institutions shows a strong commonality of content.

Second, the selective focus of the EP on (mainly) EU citizens' rights is likely to be at least partly explained by the type of organisational structure it set up to deal with Brexit (see, in detail, Section 4). Rather than having the Committees and their sectoral policy interests in the lead – the Committees “feel, and rightly so, that they were not in the front line” (Interview#10) – the BSG and its leadership eye the bigger picture and the more political issues: “if decision-making was at the level of the Committees, it would be more fragmented, less consistent and more polarised” (Interview#13). Since the informal European Council at Salzburg of 19/20 September 2018, the question of “preparedness” for a possible no-deal Brexit has become a key issue for the BSG and the other governing bodies of the EP, reinforcing the need for close coordination in order to adopt necessary fast-track legislation across different policy areas, including citizens' rights.

## **Conclusion**

The EP formal role in the Brexit negotiations is limited to its consent at the very end of the process. As this article has shown, consent has cast a backward shadow on the process, with

the EP using the vague provisions detailed in art. 50 to expand its powers throughout the negotiations. Institutionally, the EP was able not only to be informed regularly and thoroughly by the Commission; it managed to participate in the key decisions throughout the process and become a quasi-negotiator, with its informal involvement in the key stages of the Brexit process. Although previous international negotiations post-Lisbon provided some antecedents, the organisational set-up chosen by the EP to contribute effectively to Brexit has been quite unique. Through its steering group and its coordinator, and by issuing resolutions along the way, the EP has made itself heard throughout the Brexit process. Once again, the EP has been able to increase its formal powers and expand its institutional remit (Héritier *et al.* 2015; Roederer-Rynning & Greenwood 2017).

As to whether the power of the EP has translated into influence, this article reaches a more careful conclusion. What emerges clearly from the interviews and the documentary evidence is that the EP has chosen its priorities carefully. Of the three scenarios delineated in section 3 (lack of impact; selective attention; fully-fledged negotiating actor), the EP's behaviour appears to fall within the second category. Building on its role as the representative of the EU citizens, the Parliament's focus has been first and foremost on citizens' rights. Other important issues in the divorce settlement – particularly the financial contribution of the UK, and to a lesser extent the Irish question – did not have the same salience for the EP. On these items, the EP seems to have followed the inputs and lead of the other EU institutions. The choice to have the Brexit Steering Group rather than the Committees at the forefront of the Brexit negotiations may have influenced the prioritisation of the more political dossiers.

More generally, the EU institutions have all worked very closely together in the first two phases of the Brexit negotiations, and it is often difficult to disentangle their specific influence. The recognition of the EP's role in the negotiation process has facilitated a constructive relationship between the three EU institutions. Additionally, the Commission looked very favourably at the

EP's amendments, and could 'use' its democratically elected ally to extract more concessions from the UK, for instance, on some elements of citizens' rights. The Brexit negotiations have shown that with the EP's empowerment comes responsibility and a cooperative rather than confrontational attitude.

Looking ahead, the EP has already signalled that it is ready to push for further institutional involvement in the scrutiny of the Brexit process. The withdrawal agreement establishes a Joint Committee (with EU and UK officials) having the task of handling the disputes arising from the implementation of the Brexit deal. The EP has called for the possibility to scrutinise this Joint committee, while the EU-27 ambassadors have ruled that out, by indicating that the demands "go beyond what is prescribed by the treaty".<sup>xi</sup> One more time, the EP is pushing for an expansion of its institutional powers and, if the Brexit negotiations have taught us anything, some of its requests will be accepted. For the other EU institutions, this would be the safest assurance for having the EP on their own side and moderate its demands.

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<sup>i</sup> Rule 82 of the EP's Rules of Procedure

<sup>ii</sup> See Corbett *et al.* (2016) and Ripoll Servent (2018) for an overview of the policies concerned.

<sup>iii</sup> After the transmission of the UK letter opening the Art. 50 procedure nine British MEPs left the Parliament. They were either elected to the House of Commons (four) or appointed life peers (two). As it is not uncommon for MEPs from other member states to leave the EP after being elected to their national parliament (e.g., recently in the case of Germany, Sweden and France) it would be tenuous to assert that these British MEPs would otherwise have stayed in the EP. Just a few of them might have decided to quit for reasons indirectly related to Brexit, e.g. to start or maintain a professional career elsewhere.

<sup>iv</sup> British MEP Richard Corbett had actively participated in the drafting of Parliament's first Brexit resolution of 5 April 2017. When the ad-hoc body formally became the Brexit Steering Group he was replaced by Roberto Gualtieri. Apparently, the S&D leadership felt that it would be difficult to have a British MEP in such a high-profile position during negotiations on Brexit.

<sup>v</sup> In what is called the "enlarged Brexit Steering Group format"

<sup>vi</sup> These four resolutions are: the resolution on negotiations following the UK's notification that it intends to withdraw from the EU (5 April 2017); the resolution on the state of play of negotiations with the UK (3 October 2017); the resolution on the state of play of negotiations with the UK (13 December 2017); the resolution on the framework of the future EU-UK relationship (14 March 2018).

<sup>vii</sup> Pedro Lopez de Pablo, EPP spokesman, quoted in *Politico*, 28 March 2017.

<sup>viii</sup> See Michael Barnier, speaking after the third round of negotiations: "I suggest that nobody underestimates the role of the European Parliament", quoted in *Politico*, 01 September 2017.

<sup>ix</sup> Specifically, 21 issues over a total of 61.

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<sup>x</sup> Cf. the conclusions of the BSG on 15<sup>th</sup> October 2018. The Conference of Presidents on 12<sup>th</sup> December 2018, further to the uncertainties in the approval of the deal at Westminster, reiterated: “without the backstop [...] Parliament would not give its consent”.

<sup>xi</sup> Quoted in *Politico*, 21 December 2018.